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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re the Marriage of RYAN TONCHEFF and ALEXA WASSERMAN-TONCHEFF.	
ALEXA WASSERMAN-TONCHEFF, Respondent, v. RYAN TONCHEFF, Appellant.	F075671 (Super. Ct. No. 12CEFL05312) **OPINION**

APPEAL from an order of the Superior Court of Fresno County. D. Tyler Tharpe, Judge.

Ryan Toncheff, in pro. per., for Appellant.

Borton, Petrini, and Christine J. Levin; Christine J. Levin, for Respondent.

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In March 2018, the trial court entered a stipulated judgment of dissolution of the marriage of appellant Ryan Toncheff and respondent Alexa Wasserman-Toncheff.[1] Two months later, the court entered a stipulated order correcting the judgment to add Alexa's CalPERS pension to the property division in the stipulated judgment and confirming it as her separate property. Three years later, Ryan filed a request seeking to divide the CalPERS pension as an omitted asset under Family Code section 2556,[2] and asking the judgment be set aside based on fraud, perjury, breach of fiduciary duty, and Alexa's failure to comply with the disclosure requirements. The trial court denied the request, finding the CalPERS pension was not an omitted asset and Ryan's attempt to set aside the judgment was barred by the limitations periods of section 2122.

On appeal, Ryan contends the trial court erred in denying his request because the CalPERS pension was an omitted asset, as it was not adjudicated or distributed in the original judgment and the trial court lacked jurisdiction to modify the judgment by entering the stipulation; therefore, his request to divide the pension under section 2556 was timely. Finding no merit to Ryan's contentions, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The Judgment of Dissolution

In September 2012, Alexa filed a petition to dissolve her 11-year marriage to Ryan through her attorney, Katherine E. Donovan. Alexa served Ryan with a copy of her "Preliminary and Final Declaration of Disclosure," on October 9, 2012. Under retirement and pensions, she listed "[c]ommunity property interest in Petitioner's STRS benefits" and "[p]remarital and post-separation separate property interest in Petitioner's STRS benefits." The current fair market value of these assets was listed as "unknown."

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[1] We refer to the parties by their first names for clarity and convenience, because they share a last name or have multiple last names. No disrespect is intended.

[2] Undesignated statutory references are to the Family Code.

Attached to the disclosure was a CalPERS "2011 Annual Member Statement" for the fiscal year July 1, 2010 through June 30, 2011, which listed Alexa's years of CalPERS service credit as 11.228, and the balance of her total member contributions and interest as $56,864.39.[3]

On December 17, 2012, Donovan sent Ryan Alexa's proposals to resolve all dissolution-related issues. This included an update to Alexa's disclosure/schedule of assets and debts with respect to her STRS account, stating the account showed a small service credit earned prior to the marriage that was her separate property. A copy of a STRS statement was enclosed, which listed total contributions and interest of $333.21, with the date of last activity as August 31, 1999. In addition, Alexa proposed to "retain the community property interest, and her separate property interest, in the Cal-PERS membership benefits, … and retain her separate property STRS benefits." Donovan advised Ryan he had the right to consult an attorney and while the time to file his response to the petition for dissolution had passed, they could agree to a reasonable period of time to file his response and disclosure documents.

Ryan responded on December 19, 2012, that he wanted to file a formal response; he would be representing himself; and his goal "[was] to have this filed after the holiday, no later than January 5." Donovan gave him an open extension of time to respond.

On February 21, 2013, Donovan advised Ryan the open extension of time was revoked, as it appeared he and Alexa were far apart on multiple issues. Donovan gave Ryan 15 days to file his response and until March 25, 2013, to file and serve his disclosure documents.

On March 6, 2013, Ryan informed Donovan by e-mail that he and Alexa had "more or less an overall dissolution agreement in place that you drafted," and they had

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[3] Alexa subsequently filed an income and expense declaration, attaching her State of California direct deposit statements for July and August 2012, which showed retirement deductions.

agreed Alexa would have sole physical custody of the children. Six days later, Donovan sent Ryan the settlement documents for his review and response, including the judgment. Donovan encouraged Ryan to consult an attorney within the next 15 days, but if he preferred to enter into the proposed settlement before then, he could execute the settlement documents and return them to her office. Donovan also informed Ryan he needed to file with the court his income and expense declaration, as well as a declaration that he served his declaration of disclosure. Ryan subsequently filed his income and expense declaration.

On March 20, 2013, Ryan, Alexa and Donovan appeared in court to have the judgment dissolving the marriage entered, which the court did that day. The judgment adopted the parties' agreement regarding custody, visitation and support of the couple's two children, as well as the division of assets, debts, and property.

As pertinent here, section 10.09 of the agreement distributed and confirmed only Alexa's CalSTRS account as her separate property.[4] The court expressly reserved jurisdiction "to resolve all disputes between the parties that may arise regarding the interpretation, implementation, execution, or enforcement of this Judgment and to divide, evaluate, and distribute any community property assets or liabilities which have not been distributed or assigned pursuant to this Judgment." The agreement stated the parties had been advised Donovan represented only Alexa and had not advised, represented or counseled Ryan in any way, but Ryan had "determined on his own not to engage the services of counsel to represent him or advise him in these proceedings, and his failure to do so shall not be a ground for challenge or attack against or upon this Judgment."

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[4] Section 10.09 stated: "The CalSTRS account in Wife's name. Provided, however, that Wife shall assume and pay and indemnify and hold Husband free and harmless from any and all tax consequences arising out of Wife's withdrawal of any of said funds in said accounts."

The Stipulation

After the judgment was entered, Alexa discovered it only confirmed the CalSTRS account to her and failed to include her CalPERS account. Alexa contacted Donovan's office. As a result, Donovan wrote Ryan on April 26, 2013, and advised him that "[t]o correct the clerical error regarding the CalSTRS and CalPERS accounts awarded" to Alexa, she had prepared a "Stipulation to Correct Clerical Error in Judgment of Dissolution of Marriage," which was enclosed. Donovan advised: "[T]he *Stipulation* only corrects section 10.09 of the *Judgment* to include both the CalSTRS and CalPERS accounts. All other provisions of the *Judgment* remain the same." Donovan asked Ryan to sign the stipulation, as well as the enclosed declaration of unrepresented person, and return both to her office. She told Ryan to contact her office if he had any questions.

When Ryan did not respond, Donovan wrote Ryan on May 15, 2013, and again requested he sign the stipulation and declaration "to correct the clerical error in the *Judgment* regarding the CalSTRS and CalPERS accounts awarded" to Alexa. Donovan asked Ryan to return the signed documents to her by May 29, 2013, but if he continued "to refuse to cooperate" and did not return them, her office would "file the necessary moving papers to seek the Court's order in this regard," which would "include a request of the Court that you be ordered to pay [Alexa's] attorneys fees and costs as a result of your failure to cooperate."

Ryan and Alexa signed the "Stipulation to Correct Clerical Error in Judgment of Dissolution of Marriage," on May 21, 2013, and submitted it to the trial court. The document stated Alexa, with the approval of her attorney Donovan, and Ryan, acting as a self-represented person, stipulated the following may become the court's order: "THE COURT ORDERS that the stipulated *Judgment of Dissolution of Marriage*, which was filed on March 20, 2013 (hereafter, '*Judgment'*), in the above-entitled matter contains a clerical error in Paragraph 10-Distribution to Wife, more specifically Section 10.09. [¶] THE COURT ALSO ORDERS that said Section 10.09 of the *Judgment* shall be corrected

to read as follows, [¶] '10.09 The CalSTRS and CalPERS accounts in Wife's name. Provided, however, that Wife shall assume and pay and indemnify and hold Husband free and harmless from any and all tax consequences arising out of Wife's withdrawal of any of said funds in said accounts.' [¶] THE COURT ALSO ORDERS that except as otherwise provided herein to the contrary, all other provisions of the *Judgment* shall remain in full force and effect." The trial court signed and filed the stipulation and order on May 28, 2013.

Ryan's Request for Order

Three years later, on July 13, 2016, Ryan, through his attorney, Kenneth M. Cavin, filed a request seeking to divide the following as omitted assets under section 2556: (1) Alexa's CalPERS retirement account, on the ground it was neither disclosed nor adjudicated in the judgment, and never mentioned in Alexa's disclosure documents; and (2) the community property portion of Alexa's CalSTRS retirement account, on the ground the benefits acquired during the marriage were never valued. Ryan asked for a finding that "these acts," as well as the stipulation, were breaches of Alexa's fiduciary duty. Ryan asserted that by compelling him to sign the stipulation, Alexa and her attorney intended to amend the judgment to include the "undefined, undisclosed, unvalued CalPERS benefits" by falsely claiming they had already been awarded to Alexa in the judgment, when the benefits were never disclosed to him.

Ryan argued his requests for relief were timely as, under section 2556, "an unadjudicated asset remains subject to division without time limitation." Ryan also argued that even if the assets were not omitted, pursuant to section 2122, subdivisions (a) and (f), the statute of limitations for fraud and failure to comply with the disclosure requirements commences when the complaining party discovers the fraud or disclosure violation, and he did not make such a discovery until late 2015.

Ryan declared that when Donovan referenced the CalPERS membership in her December 17, 2012 letter, he believed it was a typographical error referring to the

CalSTRS account, since he had never been notified of any CalPERS benefits at any time, including in Alexa's disclosure. He further declared he signed the stipulation "believing that the CalPERS was just another term for my wife's CalSTRS account, as it had already been 'awarded to her in the *Judgment*,'" and he "had no idea there was any difference, or any value being given away, because no one had ever disclosed the value of that asset."

Alexa's Opposition

In opposition to Ryan's request, Alexa argued there were no omitted or unadjudicated assets. With respect to the CalSTRS account, Alexa asserted section 2556 did not apply because it was her separate property and the judgment confirmed the CalSTRS account to her. With respect to the CalPERS account, Alexa claimed it was adjudicated in the stipulation. Alexa further argued the court's jurisdiction to set aside the judgment based on duress, mental incapacity, mistake of law or fact, and failure to comply with disclosure requirements were absolutely time barred.

In her responsive declaration, Alexa declared the reference to "STRS" in her disclosure was inadvertent and it should have referenced "PERS." Moreover, Ryan knew where she worked and that she accrued retirement benefits during their marriage, he had both bachelor's and master's degrees in business administration, and he was well aware of their financial situation. Alexa further declared she and Ryan extensively negotiated all issues relating to their separation, including the division of community property, and as a result of the negotiations, she informed Donovan about their agreement and requested Donovan to confirm the same with Ryan, which she did in her December 17, 2012 letter. According to Alexa, Ryan never asked her or Donovan about the two retirement plans that were listed in the letter. Alexa claimed she and Ryan negotiated the settlement throughout the dissolution process, and at no time did Ryan raise an issue or concern regarding her retirement accounts with CalSTRS or CalPERS.

Ryan's Reply

In his reply declaration, Ryan stated the first time he was provided the June 20, 2011 CalPERS statement was with Alexa's opposition, which he reviewed on September 23, 2016. Ryan had the asset valued by an expert, who determined the community interest in the CalPERS pension as of October 9, 2012, was between $310,000 and $313,000. Ryan further declared that the CalPERS pension was never discussed during their 11 years of marriage.

Ryan argued the failure to disclose the value of the CalPERS pension was sufficient to set aside the judgment. In addition, he claimed he was fraudulently induced into signing the stipulation, as Donovan falsely claimed the judgment had already granted the CalPERS pension to Alexa, which led him to believe CalPERS was just another name for CalSTRS.

The Hearings on Ryan's Request for Order

The hearing on Ryan's request for order was originally set for October 5, 2016. At the outset of that hearing, which was held before the Honorable Francine Zepeda, the trial court stated Ryan sought a finding that the CalPERS account was an omitted asset, and while the trial court was not sure it was an omitted asset, it also was "not sure that it's a clerical error" and was "a little hard-pressed to find it a clerical error." The trial court, however, wanted the parties to testify regarding the circumstances surrounding the settlement and negotiations. The court set a bench trial for January 17, 2017.

On December 30, 2016, Alexa filed a trial brief, as well as a proposed joint statement of disputed and undisputed facts. In her trial brief, Alexa asserted, among other things, that if Ryan refused to sign the stipulation and the court had found the failure to reference the CalPERS account was not a clerical error, she would have filed a request for order to set aside the judgment based on mistake of fact under Code of Civil Procedure section 473. Alexa argued the CalPERS account was not an omitted asset

because it was adjudicated in the stipulation and Ryan knew he was agreeing to confirm the CalPERS account to her when he executed the stipulation.

At the January 17, 2017 hearing before Judge Zepeda, Donovan informed the court that Ryan's attorney, Cavin, had contacted her office to say he was sick.[5] Cavin provided the court with a note from his doctor stating he was unable to attend the trial that day. Judge Zepeda informed the parties she no longer conducted full day hearings; therefore, she was sending them "next door" to Judge D. Tyler Tharpe. Judge Zepeda continued the hearing to February 27, 2017, for trial setting, and noted that because Cavin had not filed anything before the trial date, such as a trial brief or witness list, he would not be allowed to file any documents, brief, or witness and exhibit lists.

Alexa and Donovan were present at the February 27, 2017 hearing before Judge Tharpe, while Ryan appeared in pro per. Donovan asserted the matter was barred by the statute of limitations and asked the trial court to first decide that issue on the pleadings. After determining the parties were at an impasse on the issue, the trial court continued the matter to review the pleadings and decide whether the statute of limitations barred Ryan's request. The trial court set a continued hearing for March 20, 2017.

The Trial Court's Decision

On March 20, 2017, the trial court issued a written ruling on Ryan's request for order. The trial court found the CalPERS account was not an omitted asset, and while it did not appear on Alexa's statutory disclosures, Donovan patently disclosed it to Ryan prior to entry of the amended judgment, as shown by Donovan's April 26 and May 29, 2013 letters.

The trial court further found that even if the CalPERS account were an omitted asset, Ryan's request was time barred. The trial court explained section 2122 governs the

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5 Ryan was present at the hearing with Cheryl Browns, who was appearing for Cavin.

grounds and time limits for a motion to set aside a judgment, which must be brought within one or two years after the date of entry of judgment, depending on the theory of the motion. Since Ryan was aware of the existence of Alexa's CalPERS account no later than the spring of 2013, his request was time barred under all of Ryan's theories. The trial court noted that much of Ryan's argument was that the asset division agreed to and ordered was not equitable, but under section 2123, a judgment may not be set aside simply because the court finds it was inequitable when made or subsequent circumstances caused the division of assets or liabilities to become inadequate.

DISCUSSION

Ryan contends the trial court erred in finding Alexa's CalPERS retirement account was not an omitted asset under section 2556, as the judgment did not include it and while the stipulation did, the trial court lacked jurisdiction to modify the judgment to correct a clerical error. He asserts that since the CalPERS account was an omitted asset, his request to divide it was not time-barred and the trial court erred in denying his request for order.

California has a strong public policy favoring the finality of judgments in cases where relief under Code of Civil Procedure section 473 is no longer available. (See *In re Marriage of Stevenot* (1984) 154 Cal.App.3d 1051, 1071; see, e.g., *In re Marriage of Kieturakis* (2006) 138 Cal.App.4th 56, 89-90.) If a property settlement is incorporated in the divorce decree, the settlement is merged with the decree and becomes the final judicial determination of the parties' property rights. (*Giovannoni v. Giovannoni* (1981) 122 Cal.App.3d 666, 669, citing *Kulchar v. Kulchar* (1969) 1 Cal.3d 467, 470-471.)

A court, however, may divide a community property asset not mentioned in the judgment under section 2556, which gives the court "continuing jurisdiction to award community estate assets or community estate liabilities to the parties that have not been

previously adjudicated by a judgment in the proceeding." (§ 2556.)[6] Whether a community asset has been "previously adjudicated … in the proceeding" depends on "whether the benefits were actually litigated and divided in the previous proceeding." (*Miller v. Miller* (1981) 117 Cal.App.3d 366, 371.)

A party's delay in seeking postjudgment property adjudication does not bar relief under section 2556. (*In re Marriage of Huntley* (2017) 10 Cal.App.5th 1053, 1060 (*Huntley*); *Lakkees v. Superior Court* (1990) 222 Cal.App.3d 531, 540, fn. 5.) Moreover, "[s]ection 2556 applies even when former spouses were aware of the community property at the time the dissolution judgment was entered." (*Huntley, supra*, at p. 1060; see also *Huddleson v. Huddleson* (1986) 187 Cal.App.3d 1564, 1569 (*Huddleson*).) "Regardless of whether the parties know of, or discuss the [asset], if the 'court was not called upon to award it, and did not award it, as community property, separate property, or any property at all' [citation], then [it] is a missed asset subject to a postdissolution claim." (*Huddleson, supra*, at p. 1569.)

We review questions of law, including the legal effect of undisputed facts, de novo. (*Ghirardo v. Antonioli* (1994) 8 Cal.4th 791, 799.) Where a marital settlement agreement is clear, we apply the unambiguous contract terms to the undisputed facts as a matter of law. (*In re Marriage of Iberti* (1997) 55 Cal.App.4th 1434, 1439.) It was Ryan's burden to establish the existence of an unadjudicated community asset. (See *In re Marriage of Hixson* (2003) 111 Cal.App.4th 1116, 1119.)

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6 Section 2556 provides in part: "In a proceeding for dissolution of marriage … the court has continuing jurisdiction to award community estate assets or community estate liabilities to the parties that have not been previously adjudicated by a judgment in the proceeding. A party may file a postjudgment motion or order to show cause in the proceeding in order to obtain adjudication of any community estate asset or liability omitted or not adjudicated by the judgment. In these cases, the court shall equally divide the omitted or unadjudicated community estate asset or liability, unless the court finds upon good cause shown that the interests of justice require an unequal division of the asset or liability."

While Ryan is correct that the judgment does not mention the CalPERS retirement account, the stipulation clearly does. The stipulation states section 10.09 of the judgment is corrected to read "The CalSTRS and CalPERS accounts in Wife's name." The stipulation effectively amended the judgment to add the CalPERS account to the list of assets confirmed to Alexa as her separate property. Even if the CalPERS account was not previously disclosed to Ryan, it certainly was disclosed in Donovan's letters to Ryan seeking correction of the judgment, as the trial court found. The plain language of the judgment and stipulation therefore awarded the CalPERS account to Alexa, and the asset was both adjudicated and distributed. (See *In re Marriage of Thorne and Raccina* (2012) 203 Cal.App.4th 492, 501-502 (*Thorne and Raccina*) [where the words of the judgment, which incorporated the parties' marital settlement agreement, expressly divided the husband's entire pension, the pension was actually litigated and divided, and therefore was not an omitted asset].)[7]

Ryan, however, contends the trial court lacked subject matter jurisdiction to enter the stipulated correction to the judgment. Whether the court had jurisdiction is a question of law we review independently. (*In re Marriage of Jensen* (2003) 114 Cal.App.4th 587, 592 (*Jensen*).)

"The term 'jurisdiction,' 'used continuously in a variety of situations, has so many different meanings that no single statement can be entirely satisfactory as a definition.' [Citation.] Essentially, jurisdictional errors are of two types." (*People v. American Contractors Indemnity Co.* (2004) 33 Cal.4th 653, 660 (*American Contractors*).) "'Lack of jurisdiction in its most fundamental or strict sense means an entire absence of power to

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[7] Since assets may be divided pursuant to the parties' agreement, we reject Ryan's contention that to be a "previously adjudicated" asset under section 2556, there must have been a hearing "where evidence is received on the factual issue of the asset's division in the original dissolution proceeding." (*Thorne and Raccina, supra,* 203 Cal.App.4th at p. 501 [whether husband's pension "was actually litigated and divided necessarily depends on the language of the judgment/agreement"].)

hear or determine the case, an absence of authority over the subject matter or the parties.' [Citation.] When a court lacks jurisdiction in a fundamental sense, an ensuing judgment is void, and 'thus vulnerable to direct or collateral attack at any time.'" (*Ibid.*) Therefore, a party may attack an order as void for lack of subject matter jurisdiction for the first time on appeal. (See, e.g., *Jensen, supra,* 114 Cal.App.4th at p. 593; *Rochin v. Pat Johnson Manufacturing Co.* (1998) 67 Cal.App.4th 1228, 1239 (*Rochin*).)

"'The general rule is that once a judgment has been entered, the trial court loses its unrestricted power to change that judgment.'" (*Rochin, supra,* 67 Cal.App.4th at p. 1237.) While a family law court retains jurisdiction to modify the support and custody provisions of judgments of dissolution (see, e.g. §§ 3022, 3087, 3088, 3651), its jurisdiction to modify property divisions is far more limited. (See, e.g. *Tarvin v. Tarvin* (1986) 187 Cal.App.3d 56, 60.) "Marital property rights and obligations *adjudicated* by a final judgment cannot be upset by subsequent efforts to 'modify' the judgment. [Citation.] [¶] The sole remedy with respect to a judgment adjudicating a property division is a timely set-aside motion under [Code of Civil Procedure section] 473[, subdivision] (b) …, a timely appeal or, after the time for [Code of Civil Procedure section] 473[, subdivision] (b) relief expires, a [Family Code section] 2120 et seq. set-aside proceeding on statutorily-prescribed grounds and within statutorily-prescribed time limits." (Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 2018) ¶ 17:340, p. 17-119; see *In re Marriage of Heggie* (2002) 99 Cal.App.4th 28, 32-33; *In re Marriage of Rosevear* (1998) 65 Cal.App.4th 673, 684.)

Neither the parties nor the court relied on either Code of Civil Procedure section 473 or Family Code section 2122 to modify the judgment's property division. Instead, the parties stipulated that the judgment contained a clerical error which the court could correct by adding the CalPERS account to the list of assets confirmed to Alexa as her separate property. Ryan contends the trial court lacked subject matter jurisdiction to

modify the judgment pursuant to the parties' stipulation because there was no clerical error to correct.[8] We disagree.

When the court entered the stipulated correction to the judgment on May 28, 2013, the parties had statutory procedures available to them to seek a set aside or other modification of the judgment. (*Thorne and Raccina, supra,* 203 Cal.App.4th at p. 499.) An aggrieved party may bring a motion under Code of Civil Procedure section 473 within six months of entry of judgment or a motion under Family Code section 2122 within one or two years of entry of judgment, depending on the grounds. (Code Civ. Proc., § 473, subd. (b); § 2122.) On May 28, 2013 – just over two months after entry of the March 20, 2013 judgment – the parties had ample time to seek relief under those statutes.[9] Because procedural mechanisms were available to the court and the parties to modify the judgment's property division, the trial court clearly had fundamental jurisdiction – that is, power to hear or determine the case and authority over the subject matter – to do so. (*American Contractors, supra,* 33 Cal.4th at p. 662 [trial court's failure to follow proper procedural requirements did not affect the court's fundamental jurisdiction].)

Ryan relies on *Thorne and Raccina* to argue the trial court lacked subject matter jurisdiction to modify the judgment. That case is distinguishable. In *Thorne and*

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8 "The court may, upon motion of the injured party, or its own motion, correct clerical mistakes in its judgment or orders as entered, so as to conform to the judgment or order directed, and may, on motion of either party after notice to the other party, set aside any void judgment or order." (Code Civ. Proc., § 473, subd. (d).) "[A] court has the inherent power to correct clerical error in its records at any time so as to conform its records to the truth, but it may not amend a judgment to substantially modify it or materially alter the rights of the parties under its authority to correct clerical error." (*Rochin, supra,* 67 Cal.App.4th 1228.)

9 Moreover, the trial court had the power under the judgment's provision reserving jurisdiction to divide, evaluate, and distribute any community property asset which had not been distributed or assigned by the judgment, as well as section 2556, to distribute the CalPERS account as an omitted asset. Consequently, Ryan's contention that the CalPERS account, which was omitted from the original judgment, could not be adjudicated and distributed by the postjudgment stipulation, is meritless.

Raccina, the wife sought a modification of the property division in the judgment of dissolution more than 11 years after the judgment was entered. (*Thorne and Raccina, supra,* 203 Cal.App.4th at pp. 496-497.) The Court of Appeal held the trial court lacked subject matter jurisdiction to modify the judgment because the time in which to bring motions under Code of Civil Procedure section 473 and Family Code section 2122 had long since expired, and the judgment had become final. (*Thorne and Raccina*, *supra*, 203 Cal.App.4th at p. 500.) Here, by contrast, the parties sought a modification within the statutory time limit. The court therefore retained subject matter jurisdiction during that time to modify the judgment.

Ryan contends that even if the court had subject matter jurisdiction to enter the stipulated correction to the judgment, the order is an act in excess of the court's jurisdiction because the court failed to follow the mandatory requirements of Code of Civil Procedure section 473, subdivision (b). He asserts the parties could not circumvent the procedures prescribed by Code of Civil Procedure section 473, subdivision (b) for granting discretionary relief from a judgment based on mistake or excusable neglect by stipulation, citing *McCarthy v. CB Richard Ellis, Inc.* (2009) 174 Cal.App.4th 106.

The phrase "lack of jurisdiction" is not limited to a lack of fundamental jurisdiction. (*American Contractors*, *supra,* 33 Cal.4th at p. 661.) Lack of jurisdiction "may also 'be applied to a case where, though the court has jurisdiction over the subject matter and the parties in the fundamental sense, it has no "jurisdiction" (or power) to act except in a particular manner, or to give certain kinds of relief, or to act without the occurrence of certain procedural prerequisites.' [Citation.] '"[W]hen a statute authorizes [a] prescribed procedure, and the court acts contrary to the authority thus conferred, it has exceeded its jurisdiction."'" [Citation.] "When a court has fundamental jurisdiction, but acts in excess of its jurisdiction, its act or judgment is merely voidable." (*Ibid.*)

In contrast to an attack on an order or judgment as void for lack of subject matter jurisdiction, an act in excess of jurisdiction is valid until it is set aside. (*People v. Lara*

(2010) 48 Cal.4th 216, 225.) "Errors which are merely in excess of jurisdiction should be challenged directly, for example by motion to vacate the judgment, or on appeal, and are generally not subject to collateral attack once the judgment is final unless 'unusual circumstances were present which prevented an earlier and more appropriate attack.'" (*American Contractors*, *supra*, 33 Cal.4th at p. 661.)

Thus, if a court possessed personal and subject matter jurisdiction, the resulting judgment generally cannot be collaterally attacked even for clear legal or factual errors. (*American Contractors*, *supra*, 33 Cal.4th at p. 661; *Fireman's Fund Ins. Co. v. Workers' Comp. Appeals Bd.* (2010) 181 Cal.App.4th 752, 767 (*Fireman's Fund*); *In re Marriage of Jackson* (2006) 136 Cal.App.4th 980, 988; *Estate of Buck* (1994) 29 Cal.App.4th 1846, 1857 (*Buck*).) Rather, a party's remedy is to assert a direct challenge to the judgment by an appeal or other available postjudgment remedies. """If a judgment, no matter how erroneous, is within the jurisdiction of the court, it can only be reviewed and corrected by one of the established methods of *direct* attack."""" (*Buck*, *supra*, 29 Cal.App.4th at p. 1854; see *Fireman's Fund*, *supra*, 181 Cal.App.4th at pp. 767-768.)

Here, both the judgment and the order on the stipulation had long been final when Ryan filed his request for order. Ryan did not directly attack the judgment or order by appeal or timely postjudgment motions. Ryan's request for relief, brought after the six-month time limit of Code of Civil Procedure section 473, and the one- or two-year limitations period of Family Code section 2122, constitutes a collateral attack on the stipulation and resulting order. Since the trial court had jurisdiction over the parties and the power to deal with the subject matter when it entered the order on the stipulation, Ryan cannot now challenge the order correcting the judgment, which was entered pursuant to stipulation. "'[A] stipulation for a judgment is a consent to the entry of the judgment and is a waiver of errors by the party consenting thereto.'" (*Adoption of Matthew B.* (1991) 232 Cal.App.3d 1239, 1272.) Because Ryan consented to correction of the judgment to award the CalPERS account to Alexa as her separate property, thereby

waiving any errors, and the order is not void on its face, Ryan's attempt to invalidate the stipulation and order at this late date fails.

In sum, since the CalPERS account was adjudicated and distributed by the order on the stipulation, it is not an omitted asset under section 2556. Therefore, Ryan's request to set aside the order is barred by the one- and two-year limitations period of section 2122. While, as the trial court noted, much of Ryan's argument is that the asset division which was ordered was not equitable, "a judgment may not be set aside simply because the court finds that it was inequitable when made, nor simply because subsequent circumstances caused the division of assets or liabilities to become inequitable." (§ 2123.)

DISPOSITION

The March 20, 2017 order is affirmed. Costs on appeal are awarded to Alexa.

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SMITH, J.

WE CONCUR:

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POOCHIGIAN, Acting P.J.

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MEEHAN, J.